

# DECISION AND ORDER

**Decision Issue Date**      **Tuesday, February 18, 2020**

PROCEEDING COMMENCED UNDER Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): Fariba Arkan

Applicant: Milan Lukovic

Property Address/Description: 148 Davisville Ave

Committee of Adjustment Case File: 19 134800 STE 12 MV (A0355/19TEY)

**TLAB Case File Number: 19 197064 S45 12 TLAB**

**Hearing date:**      Monday, December 02, 2019

**DECISION DELIVERED BY S. Makuch**

## REGISTERED PARTIES AND PARTICIPANTS

Applicant	Milan Lukovic
Owner	Encarnacao L Martin
Appellant	Fariba Arkan
Party	David C Martin
Party	M J Design Consultants Inc
Party	Darlenys Martin
Party	Philip Martin
Expert Witness	Juri Berzins

## **INTRODUCTION**

This is an appeal by an adjacent property owner, Fariba Arkan, from a decision of the Committee of Adjustment granting variances to permit the alteration of an existing one-storey detached dwelling by constructing a rear one-storey addition, a second storey, and a partial third storey addition (the proposed dwelling). The variances are set out below. They were granted on condition that the proposed dwelling be constructed substantially in accordance with east elevation A-19 drawing, received by the Committee of Adjustment, April 18, 2019, and that the second floor windows illustrated on the said elevation be opaque.

The variances granted are as follows:

1. Chapter 900.2.10.(931)(B), By-law 569-2013: Any addition or extension above the first storey of a lawfully existing detached dwelling must comply with the minimum building setback of 0.45 m required by this By-law. The third storey addition will be 0.21 m from the east side lot line.
2. Chapter 10.10.40.30.(1)(A), By-law 569-2013: The maximum permitted building depth is 17 m. The three-storey dwelling will have a depth of 36.36 m.
3. Chapter 10.10.40.70.(2), By-law 569-2013: The minimum required rear yard setback is 7.5 m. The three-storey dwelling will be located 5.58 m from the rear lot line.
4. Chapter 10.5.40.60.(7), By-law 569-2013: Roof eaves may project a maximum of 0.9 m provided that they are no closer than 0.3 m to a lot line. The roof eaves will project 0.08 m on the east side and will be located 0.13 m from the east side lot line.
5. Chapter 10.5.40.60.(3)(A)(iii), By-law 569-2013: Exterior stairs providing pedestrian access to a building or structure may encroach into a required building setback if the stairs are no closer to a lot line than 0.6 m. The side entrance stairs will be located 0.29 m from the west lot line.

## **BACKGROUND**

Clearly, the variances are numerically significant. The proposed dwelling will be located adjacent to the appellant's rear yard and will be very close to her property. The addition is to be built over the applicant's existing dwelling which is a "lawfully existing detached dwelling." The variances being sought are all related to the location of the proposed dwelling. There are no variances requested related to density or height, and the exterior walls of the proposed dwelling will not be extended beyond the footprint of the existing dwelling. The courts have held that the approval of minor variances is not dependent on the numerical or quantitative amount of a variance alone.

## **MATTERS IN ISSUE**

The matter in issue is essentially whether variances should be granted to permit the proposed dwelling to be located over the existing dwelling adjacent to the rear yard of the appellant.

## **JURISDICTION**

A decision of the Toronto Local Appeal Body ('TLAB') must be consistent with the 2014 Provincial Policy Statement ('PPS') and conform to the Growth Plan for the Greater Golden Horseshoe for the subject area ('Growth Plan').

In considering the applications for variances from the Zoning By-laws, the TLAB Panel must be satisfied that the applications meet all of the four tests under s. 45(1) of the Act. The tests are whether the variances:

- maintain the general intent and purpose of the Official Plan;
- maintain the general intent and purpose of the Zoning By-laws;
- are desirable for the appropriate development or use of the land; and
- are minor.

## **EVIDENCE**

Expert evidence was presented by two witnesses, Mr. Ocicek for the applicant, and Mr. Berzins for the appellant. Fariba Arkan, also gave evidence. Based on the expert evidence, I have no concern that the proposal is contrary to the PPS or Growth Plan.

The expert evidence confirmed that the proposed dwelling would be situated well back from the applicant's front property line but above the appellant's existing dwelling. Indeed, it would be adjacent to Ms. Arkan's rear yard. There appeared to be no dispute that the setback was the result of a water course or right of way under the front portion of the appellant's lot which inhibited the construction of a dwelling in that location. Moreover, it was not disputed that it would be more costly to construct a new dwelling at a location closer to the appellant's front lot line,

Mr. Berzin presented a model of the proposed dwelling which appeared inaccurate as it did not take into account the slope of the roof. Moreover, his assertions regarding shadow impact in the rear yard appeared overstated.

In any event it was clear on the evidence that when Ms. Arkan bought her property, the applicant's house was already located to the rear of the applicant's property. Moreover, it was clear that she did not use her rear yard and had a patio immediately adjacent to the rear of her house and that her use of her yard would,

therefore, not be significantly affected by the shadow or overlook from the proposed dwelling. Indeed, the requirement of opaque windows and the reduction in the number of windows facing her property, as shown in the east elevation, would also reduce the overlook and privacy impacts of the proposed dwelling. It also appeared from the evidence that a cedar fence along the property line between her property and that of the appellant would reduce the privacy concerns of Ms. Arkan as it would block views from basement windows.

Finally, it is important to note that there is a dwelling with a similar legal setback in the area. As a result, the proposed dwelling will respect and reinforce the physical character of the area.

## **ANALYSIS, FINDINGS, REASONS**

I find the variances should be granted and the decision of the Committee of Adjustment upheld for the following reasons: Ms. Arkan bought her property with full knowledge of a dwelling to the rear of the applicant's property and the possibility of an addition to it. Her use of her property will not be adversely affected in any significant way as her patio is adjacent to her dwelling, not in her rear yard adjacent to the proposed dwelling. Her own photo demonstrated this. She appears to make no specific use of her rear yard. The privacy of her rear yard will be enhanced by the conditions imposed by the Committee of Adjustment and further enhanced by a cedar fence along the property line. There are significant impediments to requiring the dwelling to be moved forward on the lot.

I also find that the proposed dwelling will respect and reinforce the character of the area as it and another property have exhibited such a locational attribute for many years. The variances therefore maintain the general intent and purpose of the Official Plan. The variances have no adverse impact on neighbouring property and thus maintain the purpose of the zoning bylaw. They are minor in that no changes in height or density are sought and the location of the dwelling is not moved. Finally, they are appropriate as there are impediments to constructing a dwelling at the front of the property.

## **DECISION AND ORDER.**

The appeal is dismissed. The decision of the Committee of Adjustment is upheld and the variances set out in Appendix 1 are approved subject to the following conditions:

1. The proposed dwelling be constructed substantially in accordance with the site plan drawings A-3 and elevations A-17, A18, A19, and A20 received by the Committee of Adjustment, April 18, 2019, and the second floor windows illustrated on the east elevation, A-19 be opaque.

2. A cedar fence to the maximum height permitted under the zoning bylaw be constructed along the appellant's east property line from the rear of the appellant's dwelling to the appellant's rear property line.

X 

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S. Makuch

Panel Chair, Toronto Local Appeal

## **APPENDIX 1**

1. Chapter 900.2.10.(931)(B), By-law 569-2013: Any addition or extension above the first storey of a lawfully existing detached dwelling must comply with the minimum building setback of 0.45 m required by this By-law. The third storey addition will be 0.21 m from the east side lot line.

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